

When a purchaser of motor fuel is not licensed in Illinois, but takes delivery of the fuel in Illinois, the purchaser must pay the motor fuel tax. See 35 ILCS 505/1 et seq. (This is a GIL.)

June 5, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 19, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

1. Statement of Material Facts

ABC is the fuel procurement division of XYZ. ABC has the responsibility to procure refined fuels for XYZ's STATE convenience store business. XYZ has no convenience stores outside the state of STATE. ABC has no leased storage in the state of Illinois.

XYZ does buy and wants to buy fuel from several Illinois refineries:

REFINERIES/LOCATION

Because ABC does not have an Illinois license, these refiners have previously sold fuel to ABC delivered CITY, STATE. Because the fuel was sold on a delivered CITY/STATE basis an Illinois tax license was not necessary.

In 2004 the State of Illinois announced its desire to avoid monitoring out of state pipeline sales. During this same time Illinois refineries began to change their sales contracts from delivery out of the state of Illinois to a point just outside the refinery and at a point where the fuel enters the pipeline (usually denoted as 'Pipeline Meter' or 'Pipeline Flange'). At this point the ownership and responsibility for the fuel changes hands just as if it was sold to the buyer as delivered CITY/STATE.

The Illinois Department of Revenue has denied ABC's request for an Illinois fuel license because XYZ does not use the fuel in Illinois and it does not own or lease storage in Illinois.

The problem seems to be that the Illinois Department of Revenue does not recognize the 'Pipeline Meter' or the 'Pipeline Flange' to either be inside the state of Illinois or outside the state of Illinois.

The Illinois refineries identify the 'Pipeline Meter/Flange' as a legal point of title exchange recognized by both the refinery and the various pipelines. We know this 'Pipeline Meter/Flange' is physically located somewhere. The problem is the Illinois Department of Revenue does not have an opinion on 'where' the 'Pipeline Meter/Flange' is located.

ABC's ability to purchase fuel is greatly diminished while the Illinois Department of Revenue does not have an opinion on this issue. During the last few weeks all Illinois refineries at one point have refused to sell fuel on a delivered CITY/STATE basis. REFINERY has indicated they would sell delivered CITY but we do expect this to continue indefinitely.

2. Relevant Documentation

A copy of the denial for an Illinois State Motor Fuel Tax License is included.

3. Tax Period

The tax period at issue is the current and all future tax periods. There is no audit or litigation pending with the Department in regards to this issue.

4. Previous Rulings

To the best of ABC's knowledge, the Illinois Department of Revenue has not ruled on this issue previously.

5. Supporting Authorities

ABC's view is that the Illinois Department of Revenue should have an opinion regarding its authority over every area of a refinery and a pipeline that is physically located in the state of Illinois. Without the opinions the decision to issue or not issue a tax license becomes impossible.

ABC believes that every entity that buys and sells fuel inside the state of Illinois would support our position that the Illinois Department of Revenue should have an opinion regarding its authority over every area of a refinery and a pipeline inside the state of Illinois.

6. Dissenting Authorities

We do not believe there are any authorities that disagree with the premise that the Illinois Department of Revenue should have an opinion regarding its authority over every area of a refinery and a pipeline that is physically located in the state of Illinois.

7. Trade Secrets Contained in This Letter

There are no trade secrets contained in this letter

DEPARTMENT'S RESPONSE

Under the Motor Fuel Tax Law, "[d]istributor' means a person who either (i) produces, refines, blends, compounds or manufactures motor fuel in this State, or (ii) transports motor fuel into this State, or (iii) engages in the distribution of motor fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he or she has active bulk storage capacity of not less than 30,000 gallons for gasoline as defined in item (A) of Section 5 of this Law." (35 ILCS 505/1.2)

"Receiver" means a person who either produces, refines, blends, compounds or manufactures fuel in this State, or transports fuel into this State or receives fuel transported to him from without the State or exports fuel out of this State, or who is engaged in distribution of fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active fuel bulk storage capacity of not less than 30,000 gallons." 35 ILCS 505/1.20.

Based upon the information provided, your business does not meet the requirements to be licensed as a distributor or receiver. As we understand it, ABC takes delivery of the fuel "F.O.B. Origin" at the "pipeline meter" or "pipeline flange" just outside the refinery in Illinois. We understand where the pipeline meter or pipeline flange is; the problem is that ABC does not qualify to be licensed in Illinois and may not make purchases of fuel tax-free. Since XYZ is not licensed in Illinois, but takes delivery of the fuel in Illinois, ABC must pay the motor fuel tax.

Please note that if ABC is required to pay motor fuel tax in another state, it may file a claim for refund of the tax paid in Illinois. See the Department's regulation "Claims for Refund – Invoices" at 86 Ill. Adm. Code 500.235. Claims may be made on Form RMFT-11-A, "Illinois Motor Fuel Tax Refund Claim for tax paid on or after January 1, 2001."

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
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